IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Chenaram & Ors. Vs. State of Raj.
(D.B.CRIMINAL APPEAL NO.799/2001)

D.B. Criminal Appeal under Section 374(2) Cr.P.C.against the judgment dt.23.10.2001 passed by the Additional Sessions Judge,Sojat Camp Jaitaran, District, Pali in Sessions Case No.21/1998.

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Date of Judgment: July 06, 2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE R.P.VYAS

Mr.Doongar Singh for the appellants
Mr.O.P.Rathi, Public Prosecutor

BY THE COURT: **(PER HON'BLE MR.MATHUR J.)**

1. The appellants herein namely Chenaram S/o Goparam, Lakharam S/o Pancharam and Hemaram S/o Goparam stood trial for the commission of offence under Section 302, 201, 394 read with 397 I.P.C. The

third appellant Hemaram was charged for offence under Section 302 read with 120-B and 414 I.P.C. The learned Additional Sessions Judge, Sojat holding Camp at Jaitaran convicted the appellants Chenaram and Lakharam of offence under Section 302 I.P.C. and sentenced to imprisonment for life and to pay fine of Rs.5000/-; in default of payment to further undergo 6 months' rigorous imprisonment. Both of them have also been convicted for offence under Section 397 I.P.C. and sentenced to undergo 7 years' rigorous imprisonment and to pay fine of Rs.2000/-; in default to further undergo 6 months' rigorous imprisonment. The third appellant Hemaram has been convicted of offence under Section 414 I.P.C. and sentenced to undergo 3 years' rigorous imprisonment and to pay a fine of Rs.5000/-; in default to further undergo 6 months' rigorous imprisonment.

2. Briefly stated the prosecution case is that on 13.5.98 at about 9 A.M. P.W.1 Hemaram the son-in-law of the deceased Khumaram submitted a typed written report Ex.P1 at Police Station, Sojat City stating inter alia that on 12.5.98 at about 8-9 A.M. the first appellant Chena Ram resident of the same City namely

Sojat City in the company of an unknown person visited the house of deceased Khumaram on a motorcycle. His father-in-law had received a cash of Rs. One Lac against the sale of Henna which he was to deposit in the Bank. He boarded the Motorcycle driven by Chena Ram in the company of the unknown person with the understanding that they will drop him at the Bank. At that time P.W.5 Ghewarram appeared and gave Rs.5240/- due against the loan advanced to him. At that time his nephew P.W.7 Goraram was also present. In the morning at about 8 A.M. while he was in the court premises being a petition writer received an information from Goraram to the effect that the dead body of Khumaram was lying in the field of Henna near Bagru. On receiving the information he rushed to the spot and found the dead body of his father-in-law Khumaram. The golden ear-ring as well as other ornaments were missing. It was also stated that appellant Chenaram used to visit his father-in-law deceased Khumaram for taking loan. He suspected involvement of Ramchandra, Udaram, Narayanlal, Nasir Khan, Dhaglaram etc. in the murder of his father-in-law Khumaram. On this information police registered a case for offence under Section 302, 201 I.P.C. and proceeded with

investigation. A formal F.I.R. Ex.P45 was also chalked by the police. The police visited the site and prepared the inquest report and the site-plan. The dead body was sent for the post-mortem. P.W.11 Dr.Prakash Nagauri conducted the post-mortem vide Ex.P34. He found following injuries on his person:-

> (1) Lacerated wound 10 x 3 x Bone deep with clotted blood at occipital region with fracture occipital bone.
>
> (2) Lacerated wound 7 x 2 x Bone deep with clotted blood with fracture right parietal bone at right side of parietal region and right temporal bone fractured.
>
> (3) Lacerated wound 6 x 3 x bone deep with fracture left parietal bone with clotted blood.
>
> (4) Lacerated wound 3 x 1½ x bone deep infra orbital region.
>
> (5) Depression of fronto nasal bone with fracture nasal bone.
>
> (6) In whole body petrification change present all injuries were antemortem in nature.

In his opinion the cause of death was due to head injury due to fracture of occipital bone, both parietal bone, right temporal bone and fronto nasal bone.

3. The accused appellants Lakharam, Hemaram and Chenaram were arrested on the same day vide Ex.P36, Ex.P37 and Ex.P38 respectively. At the time of arrest,

the police found that there were blood stains on the clothes of appellant Chenaram, as such, his clothes were seized vide Ex.P35. In pursuance of the information given by appellant Hema Ram ornaments and currency notes in the sum of Rs. One Lac were recovered and seized on 14.5.98 vide Ex.P10. In pursuance of the information given by Chenaram the weapon of offence namely bloodstained hammer was recovered vide Ex.P12 on 14.5.98. On the same day in pursuance of the information given by Lakharam his bloodstained clothes were recovered vide Ex.P8. The motorcycle was recovered from Chenaram vide Ex.P11. After usual investigation police laid charge-sheet against the appellants for the offences under Sections 302, 201, 394 read with 397, 302 read with 120-B and 414 I.P.C.

4. The appellants denied the charges levelled against them and claimed trial. The prosecution in support of the case adduced oral and documentary evidence. The appellants in their statement under Section 313 of the Code of Criminal Procedure denied the correctness of the prosecution evidence appearing against them. In the defence the accused persons examined D.W.1

Munnalal and D.W.2 Jagdish. The trial court having found the prosecution case proved convicted and sentenced the appellants in the manner stated above.

5. The case against the appellants rests entirely on circumstantial evidence. As per the well settled law of circumstantial evidence in the first instance we are to ensure that the circumstances put forward by the prosecution have been established. Next we have to see, whether all or any of those circumstances are incriminating in character and whether the proved circumstances are such as to establish a reasonable conclusive case against the appellants. It has to be further ensured that those circumstances must not only be compatible with his guilt but they should also be incompatible with his innocence. In other words there should be no other hypothesis but of the guilt.

6. Now, we shall examine the following set of circumstances held to have been established against the appellants on the basis of the test noticed above:-

(1) The deceased was last seen in the company of the appellants Chena Ram and Lakha Ram.

(2) Non-explanation of the presence of blood on the clothes of appellant Chena Ram.

(3) Recovery of bloodstained hammer from the possession of appellant Chena Ram.

(4) Non-explanation of the presence of blood on the clothes of appellant Lakha Ram.

(5) Recovery of the ornaments and currency notes from the possession of appellant Hema Ram.

7. We are now to see whether the trial court was right in holding that all the circumstances enumerated above are incriminating in character and what is the cumulative effect of the proved circumstances.

8. The prosecution with a view to establish the first circumstance has examined P.W.5 Ghewar Ram, P.W.6 Tara Ram, P.W.7 Goraram and P.W.9 Ramlal. P.W.5 Ghewar Ram is the nephew of deceased Khumaram. He deposed that his uncle Khumaram was financer. The appellants Chena Ram and Lakha Ram were regular

visitors of deceased Khumaram. He had seen both the appellants at the residence of his uncle Khumaram on number of occasions. About 7-8 months back the deceased sold henna to one Madan Sankhla. At that time the first appellant Chena Ram was with him. He had accompanied him to the Krishi Upaj Mandi. On that day deceased Khumaram had collected Rs.40,000/-. On 11.5.98 Khumaram had collected a sum of Rs. One Lac against the amount due with respect to the sale transaction of henna. On 12.5.98 at about 8-9 A.M. appellants Chenaram and Lakharam arrived at the house of deceased Khumaram on a motorcycle. After some time deceased along with both the appellants boarded the motorcycle. At that time he also offered to accompany them. However, the deceased Khumaram expressed that he would be going to the Bank for depositing the amount with both the appellants. At that time he separately gave Rs.5240/- to deceased Khumaram as part payment of henna. He collected the amount and kept in the pocket of the Baniyan. All the three left the house on the motorcycle. Till evening his uncle Khumaram did not return. On the next day morning at about 8 A.M. he expressed his anxiety to his cousin brother P.W.7 Goraram as to the not returning of

his uncle Khumaram. P.W.7 went out in search of Khumaram. At about 9 P.M. he informed on telephone that the dead body of Khumaram was lying in the field known as Magrunada. He reached with the policemen and other relatives on the spot. He found the dead body lying on the spot. There were multiple injuries on the face of deceased Khumaram. The ornaments were missing from the body. In the cross examination he admitted that appellant Lakharam was known to him. There is nothing substantial brought in the cross examination to discredit the testimony of this witness.

9. P.W.7 Goraram is another nephew of deceased Khumaram. He also stated that his uncle was a financier. He used to advance money to the people. He had collected a sum of Rs. One Lac against the sale of henna. He also stated that appellants Chenaram and Lakharam were regular visitors of deceased Khumaram. On 12.5.98 the appellants Chenaram and Lakharam arrived at the house of deceased Khumaram on a motorcycle. Khumaram told him that he would be going to Bank for depositing the amount of Rs. One Lac. He also stated the he would be dropped at the Bank by appellants Chenaram and Lakharam. A sum of Rs.5000/-

& odd were paid to him by P.W.5 Ghewarram Ji. He put the same in the pocket of his Baniyan. On 13.5.98 before going to the shop he inquired about his uncle deceased Khumaram. He went to the house of appellant Chenaram and then to the house of Lakharam and inquired about whereabouts of deceased Khumaram. The family members of both the appellants pleaded ignorance about whereabouts of Khumaram. In fact Lakharam and Chenaram were also not available at the residence. A some talk was going with respect to the land belonging to Chenaram. He suspected that Chenaram might have taken the deceased Khumaram to Ardiya Nada to show his land. Thus, he went to Ardiya Nada. From a distance he could see a dead body lying. When he reached near, he found that it was the dead body of his uncle Khumaram. The ornaments were missing from his body. There were multiple injuries and the body was stained with blood. He immediately returned to the village and informed P.W.1 Hemaram in the court. He again went to the place of incident in the company of P.W.1 Hemaram. Thereafter P.W.1 Hemaram submitted a typed report at the Police Station, Sojat City. In the cross examination he admitted that distance between the place of incident

i.e. Naida Bera and Sojat City is 4 Kms. Despite the fact that there is a lengthy cross examination, nothing has been brought in to discredit the testimony of this witness.

10. P.W.9 Ramlal is a truck operator. He stated that he met deceased Khumaram in the morning of 12.5.98. He deposed that he met with the deceased Khumaram on the way while he was proceeding in the company of both the appellants on a motorcycle. He stated that the motorcycle was being driven by first appellant Chenaram. The pillion was occupied by the appellant Lakharam and deceased Khumaram. He got the motorcycle stopped. He inquired from deceased Khumaram as to whether he was going to his shop. He disclosed that he was going to deposit the amount in the Bank and further he would be visiting the field of Chenaram. He proceeded to Faridabad in his truck. When he came to know about murder of Khumaram on 22nd when he returned to Sojat. There is nothing substantial brought in to discredit the testimony of this witness as well.

11. P.W.6 Tararam is an auto Mistri. He stated that on

12.5.98 the appellants Chenaram and Lakharam arrived at his workshop and demanded a hammer for the repairing of pedestal of the motorcycle. He passed on the hammer to them. They put the hammer in the dicky of the motorcycle and went out.

12. Mr.Doongar Singh learned counsel for the appellants has made good deal of arguments as to the non-mentioning of name of appellant Lakharam in the First Information Report lodged by P.W.1 Hemaram. It is submitted that the F.I.R. was lodged by P.W.1 Hemaram on the basis of the information given by P.W.7 Goraram. The First Information Report has been lodged after due deliberation as is evident from the fact that it is a well typed report. In the First Information Report Ex.P1 it is stated that on 12.5.98 deceased Khumaram left the house at about 8-9 A.M. on a motorcycle driven by first appellant Chenaram. It is also stated that deceased Khumaram boarded the motorcycle. At that time there was one more unknown person on the motorcycle. Thus, according to Hemaram deceased Khumaram left Sojat City on the motorcycle in the company of first appellant Chenaram and one unknown person. It is argued that Lakharam was known

to Goraram and Hemaram. Thus, if the second person on the motorcycle was Lakharam, there was no question of referring the second person as an unknown person. P.W.1 Hemaram has stated that he had typed the report as per the information given by P.W.7 Goraram to him. P.W.7 goraram in the cross examination stated that he had disclosed the names of Lakharam and Chenaram. He pleaded ignorance as to why Hemaram has not given the name of Lakharam in the First Information Report. The omission of name of Lakharam in the first information report is of significance. But there is evidence of P.W.5 Ghewarram to the effect that deceased Khumaram left the Sojat Town on a motorcycle driven by first appellant Chenaram. At that time Lakharam was also sitting on the pillion behind deceased Khumaram. There is also evidence of P.W.6 Tararam to the effect that Chenaram and Lakharam both arrived at his workshop to collect the hammer. At that time he had seen deceased Khumaram in the company of both the appellants i.e. Chenaram and Lakharam. On careful consideration of the entire evidence we are of the view that prosecution succeeded in establishing the most crucial incriminating circumstance of last seen of Khumaram in the presence

of both the appellants i.e. Chenaram and Lakharam. The circumstance is of conclusive nature pointing positively towards the guilt of the appellants.

13. As regards the second circumstance the appellant Chenaram was arrested on 13.5.98 vide Ex.P36. It is stated by the Investigating Officer P.W.16 Shri Ram Ballabh that blood spots were seen on the clothes of appellant Chenaram when he was arrested. Thus, his pent and shirt were seized vide Ex.P35 on the same day. They were packed and sealed in Packet G.

14. At this stage it will be convenient to deal with the link evidence. P.W.16 Shri Ram Ballabh has stated that 12 articles seized by him were deposited with Incharge of the Malkhana at Police Station, Sojat City namely P.W.13 Ramlal. It is stated by P.W.13 Ramlal that he received 14 Packets from P.W.16 Shri Ram Ballabh on 14.5.98. All the articles were in sealed condition except motorcycle and the pair of shoes. On 21st May, 1998 he handed over all the 12 Packets in sealed condition to P.W.14 Chiman Singh for delivery in the Forensic Science Laboratory after obtaining the requisite certificate from the office of the Superintendent of

Police. He also issued Road Certificate Ex.P39. P.W.14 Chiman Singh a Constable in the Police Station, Sojat City stated that he received 12 Packets in sealed condition from P.W.13 Ramlal. He took the letter to the Office of Superintendent of Police, Pali. After obtaining requisite papers from P.W.15 Shokat Hussan A.S.I. he took the packet to Jodhpur and deposited with the Forensic Science Laboratory and obtained the receipt Ex.P40. It is certified by the Forensic Science Laboratory vide Ex.P40 that all the packets were received in sealed condition. The Forensic Science Laboratory vide Ex.P46 opined that the articles from Packet G – Ex.13 Pent and Ex.14 shirt on serological examination were found to be stained with blood of human origin. Thus, the prosecution has succeeded in establishing the second set of circumstance against appellant Chenaram to the effect that just after the incident he was arrested, there were presence of human blood on his Pent and Shirt. There is no explanation as to the presence of human blood on his clothes. The circumstance is of conclusive nature pointing towards the guilt of appellant Chenaram.

15. As regard the third circumstance, in pursuance of

the information given by appellant Chenaram vide Ex.P12 a bloodstained hammer was recovered vide Ex.P42 in presence of Motbirs Devaram and P.W.2 Kana Ram. The hammer was seized and packed in Packet K. The hammer has been found to be stained with human blood as per the F.S.L. Report Ex.P46. The hammer has been identified by P.W.6 Tararam. It is stated that the hammer was collected by both the appellants Chenaram and Lakharam on the pretext of repairing the pedestal of the motorcycle. Both the appellants put the hammer in the dicky of the motorcycle. The nature of injuries on the dead body of the deceased as is evident from the post-mortem report Ex.P34 caused by hammer. Thus, the recovery of the hammer which was collected from the workship of P.W.6 Tararam is an important incriminating circumstance against both the appellants pointing towards their guilt.

16. As to the fourth circumstance, the appellant Lakharam while in custody gave information vide Ex.P39 leading to recovery of his own clothes vide Ex.P8. Bloodstained Pent and Shirt were recovered from the house of appellant Lakharam in presence of Motbirs P.W.3 Ramchander and P.W.4 Rajaram. Both the

witnesses have supported the recovery. As per the F.S.L.Report Ex.P46 the blood spots on the Pent and Shirt beloning to Lakharam were found to be stained with human blood. Thus, the prosecution has succeeded in establishing the fourth circumstance which of incriminating nature pointing towards the guilt of the appellant.

17. The fifth circumstance exclusively pertains to appellant Hemaram. He was arrested on 14.5.98 vide Ex.P37. In pursuance of the information given by him vide Ex.P49 ornaments and currency notes worth Rs. One Lac were recovered vide Ex.P10 by P.W.16 Shri Ram Ballabh in presence of Motbirs P.W.3 Ram Chander. The articles were packed in Packet marked J. It is stated by P.W.16 Shri Ram Ballabh that in pursuance of the information given by Hemaram a bag was recovered from the earth, which contained the ornaments and the currency notes. P.W.17 Mahendra Singhal, Judicial Magistrate, Sojat City at the relevant time stated that on the request of the police proceedings for identification of the property was arranged on 21st May, 1998. The ornaments of the deceased were identified by P.W.5 Ghewarram and P.W.7 Goraram vide Ex.P14. The

details of the identification proceedings are not required to be given as the same has not been challenged by the learned counsel. The appellant has not claimed the currency notes to be his own. Thus, the prosecution has succeeded in establishing by cogent evidence that the incriminating articles i.e. ornaments belonging to the deceased were recovered from the appellant Hemaram. He was in possession of the huge currency notes of Rs. One Lac.

18. From the above discussion, we conclude that the prosecution has satisfactorily established each of the circumstances which are of incriminating character leading to the irresistible conclusion that it was the appellants Chenaram and Lakharam who committed the murder of Khumaram.

19. It is contended by the learned counsel that the trial court has committed error in convicting both the appellants for substantive offence under Section 302 I.P.C. The contention raised is not of much significance. Omission to mention Section 34 would not cause any material prejudice to the accused persons in convicting them with the aid of Section 34. It has been held by the

Supreme Court in catena of cases that the conviction under Section 302/34 I.P.C. can be maintained even though no charge has been framed under Section 34 I.P.C. because accused persons are supposed to be fully aware of the murder with which they were charged. No prejudice arises for omission to mention Charge under Section 34 I.P.C.

20. As far as appellant Hemaram is concerned it is submitted that his conviction is not sustainable as there is no evidence to show that he received the currency notes and the ornaments knowing that they were stolen property. Having considered the contention raised, we are of the view that the conviction of the appellant Hemaram under Section 414 I.P.C. is not sustainable. However, his conviction can be maintained for offence under Section 411 I.P.C.

21. Consequently, the appeal being devoid of merit stands dismissed with the slight modification to the effect that the appellants Chena Ram and Lakha Ram are convicted of offence under Section 302/34 I.P.C. instead of 302 I.P.C. They are in Jail. They will serve out the remaining part of the sentence. As far as

appellant Hema Ram is concerned, his conviction under Section 414 I.P.C. is altered to 411 I.P.C. The sentence is reduced to the period already undergone. It is stated that he had remained in Jail during the period 14.5.98 to 12.8.98 which comes to almost three months. He is on bail. The bail bonds stand discharged.

(R.P. VYAS), J. **(N.N.MATHUR), J.**

BKS/-